

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND
3 NORTHERN DIVISION

4 UNITED STATES OF AMERICA,)
5 Plaintiff,)
6 v.)Criminal No. 23-cr-0278-JKB
7 CHRISTOPHER KENJI BENDANN,)
8 Defendant.)

9
10 Baltimore, Maryland
11 August 18, 2023
12 11:10 a.m.

13 THE ABOVE-ENTITLED MATTER CAME ON FOR
14 INITIAL APPEARANCE
15 BEFORE THE HONORABLE BRENDAN A. HURSON

16 APPEARANCES

17 On Behalf of the Plaintiff:

18 COLLEEN MCGUINN, ESQUIRE

19 On Behalf of the Defendant:

20 KOBIE FLOWERS, ESQUIRE
21 MICHAEL ABRAMS, ESQUIRE

22 Proceedings Recorded by Audio Recording

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24 Reported by:

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 Baltimore, Maryland 21201

1 (11:10 a.m.)

2 **THE COURT:** Good morning, everybody. Please be seated
3 and Government call the case.

4 **MS. MCGUINN:** Your Honor, good morning. Assistant
5 United States Attorney Colleen McGuinn on behalf of the
6 Government calling for this court United States of America v.
7 Christopher Bendann. This is Criminal Case No. JKB-23-278.

8 **THE COURT:** Good morning to you. And for the defense.

9 **MR. FLOWERS:** For the defense Your Honor, good
10 morning. Kobie Flowers on behalf of Mr. Christopher Bendann.
11 I'm joined at counsel table by my co-counsel Mr. Michael
12 Abrams.

13 **THE COURT:** Good morning to all of you. Particularly
14 to you, Mr. Bendann.

15 Everybody can be seated. All right. So, Mr. Bendann, we
16 are here today because a grand jury of this federal court has
17 returned an indictment against you. An indictment is a
18 charging document that sets out a series of allegations that
19 the Government has made regarding violations of federal law. I
20 am aware that there has been prior state proceedings that may
21 or may not be related to this. This is, as your lawyer I'm
22 sure has explained, federal court essentially starting over.

23 What we're going to do today is go through the charges, go
24 through the possible penalties. I want to make clear, today is
25 not your trial. It's not a motions hearing. But it's still a

1 very important day so if there's anything that you need to talk
2 to your lawyer about, or lawyers about, you can just raise your
3 hand and I'll give you the time that you need to do that.

4 We're going to then discuss some important constitutional
5 rights that you have. We're going to address the topic of
6 counsel in this federal case. And then we're going to move on
7 to the question of detention pending what happens next in this
8 case.

9 Most importantly, do you understand what I've said so far?

10 **THE DEFENDANT:** Yes, I do, Your Honor.

11 **THE COURT:** Okay. Can you tell me just the year, just
12 the year, that you were born?

13 **THE DEFENDANT:** 1984.

14 **THE COURT:** All right. Are you able to read, write
15 and understand the English language?

16 **THE DEFENDANT:** Yes, I am, Your Honor.

17 **THE COURT:** Are you under the influence of any
18 substance, or do you have any medical condition that impairs
19 your ability to understand what I'm saying right now?

20 **THE DEFENDANT:** No, I do not, Your Honor.

21 **THE COURT:** You feel like you hear me and you
22 understand what we're doing here today?

23 **THE DEFENDANT:** Yes, I do.

24 **THE COURT:** Okay. All right. Let's get to the
25 charges that are alleged here in federal court. Do you have a

1 copy of the indictment?

2 **THE DEFENDANT:** Yes, I do. Your Honor.

3 **THE COURT:** What I'm looking at, to be clear, is case
4 23-cr-278-JKB, Document No. 1. And that's what you have?

5 **THE DEFENDANT:** Yes, Your Honor.

6 **THE COURT:** All right. So this indictment alleges six
7 violations of federal law. Counts 1 through 5 allege,
8 essentially, the same allegation but on separate dates.

9 Specifically, Counts 1 through 5 allege that on
10 September 16th, 2017, June 21st, 2018, August 26, 2018,
11 January 2nd, 2019, and February 9th, 2019, that you, knowingly,
12 attempted to and did employ, use, persuade, induce, entice, and
13 coerce a minor victim to engage in sexually-explicit conduct as
14 defined under the relevant federal law for the purpose of
15 producing a visual depiction of such conduct knowing and having
16 reason to know that such a visual depiction was produced and
17 transmitted using materials that were mailed, shipped, and
18 transmitted in interstate and foreign commerce by means,
19 including by computer, and that such visual depictions were
20 actually transported and transmitted using any means and
21 facility in interstate commerce in and affecting interstate
22 commerce all in violation of 18 U.S.C. 2251(a).

23 So Counts 1 through 5, if you were to be convicted on
24 Counts 1 through 5, these carry the same possible penalty.
25 That possible penalty is a mandatory minimum of 15 years in

1 federal custody, up to a maximum of 30 years in federal
2 custody.

3 As is the case with any federal conviction, if you were
4 convicted, you would be subject to a term of supervised
5 release, which is sort of a fancy word for probation, that
6 would follow any incarceration.

7 Counts 1 through 5 carry a five-year mandatory term of
8 supervised release up to the possibility of a lifetime
9 commitment to supervised release. Also Counts 1 through 5
10 carry a possibility of a 250,000-dollar fine.

11 Count 6 alleges that in and between September 1st, 2017
12 and January 23rd, 2023, in the district of Maryland, that you
13 knowingly possessed material that contained an image of child
14 pornography as defined under the relevant law which image had
15 been mailed, shipped, and transported using any means or
16 facility of interstate and foreign commerce in and affecting
17 interstate and foreign commerce by any means, including by
18 computer, and it was produced using material that had been
19 mailed, shipped, and transported in and affecting interstate
20 and foreign commerce by any means, including by computer.

21 Count 6, along with Counts 1 through 5 in the indictment,
22 provides a little bit more specific detail as to what the
23 images are, what they're named, and where they were found, and
24 that is the same with Count 6.

25 If convicted on Count 6, a possible penalty carries, I

1 believe, zero to 10 years in custody; five years of supervised
2 release up to life of supervised release; and a 200 -- up to a
3 250,000-dollar fine. And in federal court, if you are
4 convicted on any count, there is a required 100-dollar special
5 assessment per count.

6 There's also a forfeiture provision attached to this
7 indictment. Not uncommon. What it is is that if you were to
8 be convicted the Government would seek to the forfeiter of the
9 items listed therein or oftentimes substitute assets if those
10 items are not located.

11 Let me be clear that these penalties I've listed are not
12 necessarily what you would get if you were convicted and,
13 again, I'm not saying you will be convicted. But do you
14 understand what the charges are and what the possible penalties
15 are?

16 **THE DEFENDANT:** Yes, I do, Your Honor. Thank you.

17 **THE COURT:** You have many important constitutional
18 rights and we're going to talk about two of them right now.
19 One is your Fifth Amendment right to remain silent. You do not
20 have to give any statements to the Government or Government
21 agents about your charges. You do not have to answer any
22 questions posed to you by the Government. If you were to give
23 a statement or you were to answer any questions, anything you
24 say could be used against you in court.

25 Do you understand your fifth amendment right to remain

1 silent?

2 **THE DEFENDANT:** Yes, I do, Your Honor.

3 **THE COURT:** All right. Under the Sixth Amendment you
4 have the right to be represented by an attorney at all stages
5 of this case, starting obviously now and moving forward. You
6 can hire an attorney or you can ask, if you can't afford to
7 hire an attorney, to have one appointed for you.

8 I see that Mr. Flowers is here next to you, which
9 indicates to me that you are going to retain or have retained
10 the services of Mr. Flowers.

11 **THE DEFENDANT:** Yes, I have.

12 **THE COURT:** Do you concur?

13 **MR. FLOWERS:** Yes, I concur, Your Honor. We just
14 found out about the indictment this morning at 5:00 a.m. I've
15 been representing Mr. Bendann in the state case and also
16 there's a sealed federal case. This indictment is something
17 that we certainly need to speak about, my ongoing
18 representation for this. So what I'd like to do, Your Honor,
19 with the Court's indulgence, is enter a conditional entry of
20 appearance and, once we've kind of work out things, return to
21 the court and let you know I'm either in or I'm out with
22 respect to the new indictment I just found out about today.

23 **THE COURT:** Understood. I completely understand. I
24 think the way we can proceed is, first, I have signed an order
25 to unseal the indictment and so the case should be unsealed, if

1 it isn't already, it should be though.

2 Second, you can enter your appearance in the case and
3 obviously if circumstances require you to move to withdraw that
4 can be done by motion and the request can be made to either
5 substitute counsel or if conditions are appropriate to seek
6 appointment of court-appointed counsel. I'll ask that you do
7 enter that appearance. It's understood that there needs to be
8 some additional conversations between you and your client.

9 That said, Mr. Bendann, I'm confident you understand your
10 Sixth Amendment right to counsel and you understand what your
11 lawyer just said regarding your representation?

12 **THE DEFENDANT:** Yes, I do, Your Honor. Thank you.

13 **THE COURT:** All right. So the next issue is what do
14 we do, let me pause for a second and remind the Government, as
15 required by Rule 5(f), the United States is ordered to produce
16 all exculpatory evidence to the defendant pursuant to *Brady v.*
17 *Maryland* and its progeny, not doing so in a timely manner may
18 result in sanctions, including seclusion of evidence, adverse
19 jury instructions, dismissal of charges, contempt proceedings,
20 vacating a conviction or disciplinary action against the
21 prosecution. And I will enter an order to that effect now.

22 So let's move on to the next question. What is the
23 Government's position on pretrial detention?

24 **MS. MCGUINN:** Your Honor, the Government is seeking
25 detention.

1 **THE COURT:** What is the basis the Government is
2 seeking pretrial detention?

3 **MS. MCGUINN:** Your Honor, the Government is seeking
4 detention based on the rebuttable presumption under
5 3142(e)(3)(E) because this case involved a minor and is
6 specifically charged under 18 United States Code 2251.

7 **THE COURT:** So the presumption would kick in at the
8 hearing itself and I think is it 3142(f)(1)(E), I was looking
9 at it as I ran up here. That would allow the Government to
10 seek detention in the first place?

11 **MS. MCGUINN:** Yes.

12 **THE COURT:** Okay. So the Government's moving under
13 3142(f)(1)(E) but --

14 **MS. MCGUINN:** Yes, Your Honor.

15 **THE COURT:** And I don't mean to, you know, be too
16 persnickety, but I want to make sure we're on the same page.

17 **MS. MCGUINN:** Yes, sir.

18 **THE COURT:** All right. Mr. Bendann, what the
19 Government is saying is this, under the Bail Reform Act the
20 relevant law that controls pretrial release in federal court,
21 the Government is only allowed to seek the pretrial detention
22 of a defendant under a few specific circumstances. One of
23 those specific circumstances is outlined in 18 U.S.C.
24 3142(f)(1)(E), which is if an offense allegedly involves a
25 minor victim, then the Government has the right to seek your

1 detention. Doesn't necessarily mean that they succeed in that.
2 Doesn't necessarily mean that you are to be detained. But it
3 does allow the Government to make that position, which they
4 have now made.

5 What's your position on pretrial detention?

6 **MR. FLOWERS:** Your Honor, my position is that
7 Mr. Bendann should be released on the pretrial condition that
8 he's already been released on. He's been, with respect to the
9 state case, has had perfect compliance for six months. I
10 understand that the Government is also going to ask this Court
11 for a continuance. I oppose that continuance because the
12 Government cannot make a threshold showing that Mr. Bendann
13 will be detained, given that he has already been released
14 under, essentially, the same document charges. I understand
15 that there's a rebuttable presumption.

16 **THE COURT:** Yes.

17 **MR. FLOWERS:** Our position is that presumption has
18 already been persuasively rebutted because we have a judge who
19 has released Mr. Bendann, again, on essentially the same
20 charges. In fact, in the state case Mr. Bendann is charged
21 with rape. And I have a copy of the indictment so I can make a
22 more fulsome argument if the Court is interested in that. But
23 at a high level, the defense is asking for Mr. Bendann to be
24 released on the same conditions that he has complied with for
25 six months without fail. Showed up to no less than nine

1 hearings, including sealed hearings in this courthouse without
2 issue. And that the Government, again, cannot make that
3 threshold showing that somehow Mr. Bendann has no criminal
4 record, is a flight risk, by preponderance of the evidence, and
5 is a danger by clear and convincing evidence.

6 So, again, at a high level that's the defense's position,
7 Your Honor.

8 **THE COURT:** And I appreciate that. I want to sort of
9 cut it up a little bit because, first, your arguments are
10 noted. And they are arguments that tend to weigh on the
11 question of pretrial detention, whether it's appropriate or
12 not. Unfortunately, my reading of the Bail Reform Act 3142(f)
13 says "The hearing shall be held immediately upon the person's
14 first appearance before the judicial officer, unless that
15 person or the attorney for the Government seeks a continuance.
16 In that situation, where the Government seeks a continuance,
17 they have up to three days, not including the weekend, to
18 prepare."

19 And you obviously have the right to ask for up to
20 five-days. You made a representation -- I'm going to kick it
21 back over to the Government, as to whether you're asking for
22 those additional days?

23 **MS. MCGUINN:** I am, Your Honor.

24 **THE COURT:** Okay. This question that you're raising
25 as to whether there needs to be any additional showing to get

1 those three days, unfortunately for you -- I'm saying
2 unfortunately not because of my own opinion, I'm saying with
3 respect to your argument.

4 **MR. FLOWERS:** I understand, Your Honor.

5 **THE COURT:** -- the Bail Reform Act doesn't appear to
6 have any limitation in it. I have not done extensive research
7 on it but my understanding, and certainly the past practice in
8 this court, has been if the Government seeks that continuance,
9 they get that continuance. And if you seek that continuance,
10 you get that continuance.

11 **MR. FLOWERS:** Right.

12 **THE COURT:** Do you have any authority that --

13 **MR. FLOWERS:** I do, Your Honor.

14 **THE COURT:** Okay.

15 **MR. FLOWERS:** I anticipated this coming up and I do
16 have some authority. I'd like to cite for the Court a Ninth
17 Circuit case, that's the best we could do. It is 768 F.2d,
18 1141. Again, that's a Ninth Circuit case that came out in
19 1985. And in that case, I would just like to kind of read key
20 parts of that case as the Ninth Circuit was interpreting the
21 Bail Reform Act with respect to this very issue.

22 The Ninth Circuit said, quote, "It's confirmed by the
23 explanation in the Senate report that provisions for
24 continuance were to permit a limited period of time for
25 preparation for the hearing" -- and this is the key piece --

1 "particularly if the Defendant was arrested soon after the
2 commission of the offense which he is charged," unquote.

3 I'm reading from Page 1144. So I want to stop there for a
4 minute and take a beat. There's a couple other points that
5 this case brings out, and I also want to talk about the
6 practice of this courthouse.

7 This first point here, this idea that when the Defendant
8 or the accused was arrested soon after the commission of the
9 offense, that's certainly not what has happened here. These
10 charges go all the way back to 2017. The possession charges,
11 as the Court is well aware, is simply because they were able to
12 take Mr. Bendann's electronic devices, that's the only way we
13 would get up to even January of 2023.

14 So the Ninth Circuit has explained, again, it makes sense
15 that you would have a delay when the charge -- when the alleged
16 offense happened and then the person is arrested because people
17 need to figure out who is who and what is that. It's not the
18 case here.

19 In fact, Judge Hurson, the government first arrested
20 Mr. Bendann back in February of 2023.

21 **THE COURT:** Well, the state government.

22 **MR. FLOWERS:** The state government, right. And what
23 the state government did was on February 1st of 2023, there was
24 a state arrest and SWAT team that entered Mr. Bendann's house,
25 we'll get to that momentarily. But then on February 9th, the

1 federal government was involved and they issued a search
2 warrant to take the devices.

3 The point being, Judge Hurson, is that the Government has
4 known about this case for at least six months by virtue of its
5 search warrant. And we know that to get a search warrant
6 typically there is an investigation that precedes that, right.
7 So for the Government to come into court today having issued a
8 second -- or having issued an arrest warrant on its own time
9 and then to say we need time to prepare, again, that goes
10 against kind of what the Ninth Circuit's reasoning says about
11 this particular part of the statute. So that's point one.

12 **THE COURT:** Let me stop you there.

13 **MR. FLOWERS:** Yeah.

14 **THE COURT:** First, you know, if you're talking Ninth
15 Circuit 1985, we're in the Fourth Circuit. I love the Ninth
16 Circuit states but that doesn't apply here. And I understand
17 your position with respect to that sentence which, if I recall,
18 you said uses the words "particularly if," which doesn't seem
19 to necessarily be a condition. It's just an adjective of sorts
20 to describe, you know, what a condition might look like.

21 So that said, I would ask the Government this unique
22 question that you just posed with respect to the delay, if you
23 want to be heard on that, I think that's --

24 **MS. MCGUINN:** I will briefly say, Your Honor, that the
25 Government has access to the evidence in this case officially

1 less than a week or just about a week that we've been able to
2 look at devices and electronic evidence. So we haven't -- the
3 Government being the U.S. Attorney's Office and the FBI, have
4 not been investigating this case for six months outside of
5 that. Maybe some limited information, understanding what the
6 state had already done, maybe tagged onto some of the things
7 they have done. But not really. This is production,
8 essentially, sexual exploitation of a child, but production,
9 but production of child pornography. You don't have child
10 pornography unless you have the electronic evidence, and as I
11 indicated the Government has not had access to that evidence,
12 only for about a week. And, in fact, the search is ongoing on
13 what was approximately, definitely more than 10 electronic
14 devices.

15 So it's much different than how counsel is couching this
16 that we've just been sitting here twiddling our thumbs for the
17 last six months, when, in fact, our hands have been tied for
18 six months.

19 **MR. FLOWERS:** If I may respond, Your Honor?

20 **THE COURT:** Yes, briefly. That's fine.

21 **MR. FLOWERS:** Thank you, Your Honor. I appreciate
22 what the Court is saying, that, look, this is a Ninth Circuit
23 case, it's not the Fourth Circuit case. I certainly understand
24 the Court's opinion that it's not binding on this Court. But
25 the Court also said that there's really no case law that tells

1 the Court one way or the other where to go. So we've brought
2 case law to the Court for it to consider, right.

3 And I think what's most important here is that the Ninth
4 Circuit did go into and talk about the legislative history of
5 the Bail Reform Act and it talked about how it's to protect the
6 defendant because he's the one who remains detained pending
7 this continuance. He's been out with these charges over his
8 head for six months.

9 **THE COURT:** Yeah.

10 **MR. FLOWERS:** And has never had a problem.

11 **THE COURT:** Which I think is something that would be
12 very relevant at a detention hearing. I think the only problem
13 I'm having is just the issue is when is that detention hearing
14 to be held. Because I will certainly take notice of everything
15 you're saying, which is that he has been on some form of
16 release in state court for what appears to be very serious
17 charges. He also has, as you said, shown up to numerous court
18 appearances, has not left the area without authorization, at
19 least according to your representations, which, again, I will
20 credit.

21 These are all very, I'm sure the Government would agree,
22 compelling argument at a detention hearing. It's just the
23 issue we're having right now and when do we have the detention
24 hearing. And I am not convinced by the Ninth Circuit authority
25 that that detention hearing can happen today because the

1 Government does, under the statute -- and I agree, my question
2 about case law was because the language of the statute is so
3 plain I'm not sure we even get there but that's what I was
4 inquiring about.

5 I will --

6 **MR. FLOWERS:** Your Honor, one last point about that.

7 **THE COURT:** Yeah, please.

8 **MR. FLOWERS:** I get --

9 **THE COURT:** No, I want you to make your record. So
10 please go ahead.

11 **MR. FLOWERS:** Thank you very much, Your Honor. I
12 understand exactly what the statute says and, again, I've
13 provided this case law. The fundamental problem we have here,
14 Your Honor, is essentially what the Government is allowed to
15 come and do if the Court doesn't require the Government at
16 least to make a threshold showing. Again, not to have a
17 full-blown detention hearing, but I haven't heard a threshold
18 showing that he is a danger or a flight risk. Because if we
19 don't allow for that threshold showing, we allow for what
20 happened here today. The Government gets to come in, 5:00 in
21 the morning, issue an arrest warrant --

22 **THE COURT:** Let's not forget is based on a grand
23 jury's probable cause finding. I want to make sure we aren't
24 creating this out of necessarily thin air, that the entire Bail
25 Reform Act is triggered by the return of indictment or a sworn

1 complaint.

2 MR. FLOWERS: That's right.

3 THE COURT: But I take your point.

4 MR. FLOWERS: Please, and I just want to amplify a
5 little bit, it's really important. We all understand that
6 certainly there's been a grand jury who has heard evidence,
7 without a defense attorney present, and has issued an
8 indictment. We also understand that that's a process that the
9 Government and the Government alone controls. That the
10 Government all the time decides when to bring a case and when
11 not to bring a case while working with the grand jury.

12 Here, the Government decided to bring this case today.
13 Arrest him at 5:00 a.m. in the morning on a Friday and Your
14 Honor should take into account they did the same thing, albeit
15 the state government, six months ago on February the 1st.

16 And so what we have here, Your Honor, is an abuse of
17 power, really. Because they know he's been out for six months.
18 They know that he has counsel. He's made every single hearing.
19 They know that if and when we get to a detention hearing
20 they're going to have a very difficult time proving that there
21 are not conditions of release for him to be out on. Knowing
22 that, they come in on a Friday morning, with a SWAT team,
23 trained lasers on him and his father, who is in the courtroom
24 today. A man who has no criminal record. They bring him here
25 and they say --

1 **THE COURT:** Yeah.

2 **MR. FLOWERS:** -- we're going to detain you for as long
3 as we can, knowing that you're going to get out. That's
4 punitive and abuse of power.

5 **THE COURT:** Let me stop you right through. I
6 appreciate the argument, and I understand the position you're
7 in and your client is in.

8 Mr. Bendann, let me start by saying one thing, what I'm
9 saying in my findings on this particular issue has no bearing
10 on whether you will detained. That is a question that is
11 answered under other sections of the Bail Reform Act. And let
12 me be clear, I understand your attorney's frustration with the
13 process but there's really nothing necessarily abnormal about
14 the way the process has unfolded here with respect to just the
15 literal return of an indictment in this case and then you're
16 brought in for an initial appearance.

17 And the statute is clear that the Government has that time
18 to prepare. This is not uncommon in this courthouse that there
19 are arrests, that the Bail Reform Act is invoked, that that
20 time period is invoked and that there is a delay between the
21 arrest and the detention hearing. And oftentimes people are
22 released, oftentimes they are not.

23 What I am saying right now is simply that I will give the
24 Government that additional time and the question then becomes
25 what date will it be? It has to be Monday, Tuesday. You know,

1 I don't know how many days the Government needs. But I
2 certainly credit counsel's argument that even though your
3 investigation of the literal federal charges, in essence, the
4 federal hook, if you will, maybe just started, that your
5 investigation into the Defendant, your awareness of the
6 Defendant's situation in the community, your awareness of the
7 Defendant's release in the state case, that can't be new to the
8 Government. I don't know how much preparation is needed.

9 Let me say one more thing before you respond. I'm sitting
10 here with a pretrial services report in front of me which was
11 just completed, thank you very much pretrial for your prompt
12 work, that recommends detention. There's a lot of information
13 that obviously the Court has not had an opportunity to review.

14 So while the Bail Reform Act, as I think your lawyer
15 pointed out, is certainly meant to move the process along for
16 the defendant, I want to make clear that this is not a case
17 that is quickly disposed of by a judge sitting in my position.
18 You need to review this material. You need to make the
19 necessary inquiries and obviously listen to the arguments from
20 counsel.

21 With respect to the date of the hearing, what is the
22 Government's position? Do we have a date that's open? Have
23 you talked about a date?

24 **MS. MCGUINN:** We have not due to counsel wanting to
25 have it today.

1 **THE COURT:** Okay.

2 **MS. MCGUINN:** We just did not have that discussion,
3 Your Honor. I am available Monday. I am available
4 certainly --

5 **THE COURT:** Monday sounds like it might be the day to
6 do it given the arguments that have been raised.

7 What's the Court's schedule on Monday look like?

8 **THE CLERK:** Your Honor, we can do Monday at 10:00 a.m.

9 **MS. MCGUINN:** That's fine for the Government.

10 **THE COURT:** Are you available?

11 **MR. FLOWERS:** I'll make myself available. I actually
12 have a deposition that I will cancel. I do want to, for
13 purposes of the record --

14 **THE COURT:** Yes, bring, the other issue -- let me be
15 clear, I'm not going to put this as a basis for not having
16 to -- this court's calendar is absolutely packed all day. And
17 so having decided this issue, I'm happy to let you make your
18 final points but I've got to move forward.

19 **MR. FLOWERS:** Your Honor, I understand that you
20 decided the issue, but for purposes of the record I definitely
21 need to at least provide substantive information given what the
22 Court has said.

23 First off, I go back to the Ninth Circuit case, 768 F.2d
24 1141, that Court said specifically, and I quote, at Page 1146,
25 "The liberty interest of the individual who has yet to be tried

1 should not be subordinated to the scheduling problems of
2 counsel or the courts," end quote.

3 I just want to make sure that was there for the record.

4 The Court also mentioned that the pretrial services report
5 recommends detention.

6 I want to submit to the Court a -- what I'm going to mark
7 as Defense Exhibit 3 and Defense Exhibit 2. I'll provide
8 copies to counsel. But this is an order from judge -- may I
9 approach, Your Honor?

10 THE COURT: Yes, of course.

11 MR. FLOWERS: This is a order from Judge Alexander,
12 along with petition briefing from Judge Alexander, who decided
13 based off of essentially the same case to go ahead and release
14 Mr. Bendann. So with respect to the pretrial services report
15 that recommends detention, again, you have a circuit judge in
16 Towson who recommended that this man be released.

17 Then, finally, there's some misstatements in the pretrial
18 services report that I just want to correct on the record.

19 THE COURT: Well, that's probably a good idea to
20 quickly do that now. Have you talked to the Government about
21 what the alleged misstatements are?

22 MR. FLOWERS: No, I haven't had a chance. This
23 statement might be overstated. Maybe just -- it's not as
24 accurate as it could be. I just want to bring that --

25 THE COURT: That's a different issue. Why don't we

1 save this until Monday. If there is something that could be
2 elaborated on, that's not uncommon. Just make sure and, in
3 fact, I'll tell you -- and you know this, you've been around
4 this courthouse a little bit. Pretrial services will be happy
5 to hear any additions, any -- they'll take it. They'll add it
6 into the report.

7 One quick question I did have with respect to your
8 client's current conditions, just so it's on the record for
9 Monday. Is there any sort of monitoring? As you know, the
10 Adam Walsh Act, in certain circumstances, I believe this may be
11 one, requires some sort of monitoring if someone is ultimately
12 released.

13 Is Mr. Bendann on some sort of electronic monitoring in
14 the state system?

15 **MR. FLOWERS:** Yes, Mr. Bendann is on electronic
16 monitoring.

17 **THE COURT:** Okay. Second question for the Government,
18 you may not know the answer to this, what is the status of the
19 state case now that this case has been federally charged?

20 **MS. MCGUINN:** I don't and can't speak to that. That's
21 a separate entity.

22 **THE COURT:** Okay.

23 **MR. FLOWERS:** I can tell you, Your Honor, if the Court
24 will indulge me, we have a trial date September the 14th. We
25 have a motions date -- I'm sorry -- trial date December the

1 14th, motions date in a couple of weeks on September the 6th.

2 THE COURT: Okay.

3 MR. FLOWERS: And also --

4 THE COURT: Go ahead.

5 MR. FLOWERS: If you're going to remand Mr. Bendann
6 back to custody, I would ask that he be protected. He was on
7 suicide watch when he was briefly -- we had to go through this
8 song and dance in the state court. He was ultimately released.
9 He's got some mental health issues. He suffered a heart attack
10 back in April because of the pressure of fighting these cases
11 when he was locked up. So it's, again, another reason why we
12 would like to have a detention hearing today and I understand
13 the Court's rulings.

14 THE COURT: I understand. That ruling has been made.
15 It's going to be Monday at 10:00 a.m. As to the health
16 concerns, have you completed the medical form, can you do that?
17 It's in front of you on the table.

18 Mr. Bendann, here's what I'm going to do. You are going
19 to be held in federal custody over the weekend. You will be
20 returned to this courthouse Monday at 10:00 a.m. for your
21 detention hearing.

22 I will make the release order and the memo that was filed
23 in your state case a part of this record and it will be
24 available to the judge, whoever it is on Monday, may be me, may
25 be somebody else.

1 **MR. FLOWERS:** I think it's Judge Coulson.

2 **THE COURT:** It's Judge Coulson. It'll be Judge
3 Coulson on Monday. It'll be made available to Judge Coulson.

4 I will take your lawyer's -- we'll complete, we
5 colloquially call it medical form where it's listed any
6 medications that you're on, any health need you have. I'm
7 going to tell you the same thing I tell everyone that comes
8 into this courtroom, which is you will be taken to a detention
9 facility following this hearing. Act as though they did not
10 receive any paperwork. They're going to ask you what your
11 health concerns are, please be very vocal about that. Let them
12 know what your health concerns are, let them know what your
13 considerations are.

14 I'm going to take the representations that were made to me
15 by your counsel, I'm going to contact the United States
16 Marshals and let them know specifically what was just told to
17 me in court so they will be aware of the situation and aware of
18 the past health and mental health issues.

19 This detention is, as you will see on this form, temporary
20 detention. It is only in place until Monday at 10:00 a.m.
21 Monday at 10:00 a.m. you will return to court. You will have a
22 detention hearing under the Bail Reform Act where the
23 Government will have to make its case for why you must be
24 detained pretrial.

25 As you've heard them say, there is something called a

1 presumption of detention. As I'm sure your lawyer will point
2 out, that is something that can be rebutted, I believe, with
3 some credible evidence, and he's presented that information
4 today. But that whole discussion about where you will be
5 pending your federal trial will happen at Monday at 10:00 a.m.

6 All the arguments that your lawyer has raised I'm sure
7 will be repeated and then some on Monday and that decision
8 would be made. This is a temporary detention order that's only
9 in place until 10:00 a.m. at Monday.

10 I'm going to tell you the following as well, you have been
11 in custody in the state prior to this, your lawyer has told me.
12 They do not have your health record. I would assume they do
13 not have your health records from the state. I would assume,
14 as you go into detention here for this brief period until
15 Monday at 10:00 a.m., that, again, you should act like they
16 know nothing about your case or your health conscious. So make
17 sure you are vocal to the intake folks when you are brought in
18 as to your health concerns. And I know your lawyer knows how
19 to handle that as well.

20 And the location of your pretrial detention, I do not know
21 where it will be, it will more likely than not be Chesapeake
22 Detention Facility, I'm not sure, but I will contact the
23 marshals immediately following this to relay the concerns
24 regarding suicide, regarding separation. And I will tell you
25 that I can assure they will take that very seriously.

1 Anything further from the Government?

2 MS. MCGUINN: Nothing from the Government, Your Honor.

3 Thank you very much.

4 THE COURT: From you, Mr. Flowers? All your arguments
5 are preserved and always well made.

6 MR. FLOWERS: Thank you, Your Honor. I just want to
7 make sure two exhibits are part of the record.

8 THE COURT: Yes.

9 MR. FLOWERS: I also want to make sure it's part of
10 the record that I did speak with the federal defender's office
11 and they, too, are of the mind that there needs to be a
12 threshold showing before the granting of continuance by the
13 Government.

14 THE COURT: The last question I had for you, if this
15 is made part of the record, is anything in this memorandum of
16 law that's Exhibit 2, does this need to be sealed in any way?

17 MR. FLOWERS: No, it was filed in the state court in
18 Towson and the order obviously is a public order.

19 THE COURT: I'll ask that -- now I have Exhibit 2 and
20 Exhibit 3.

21 MR. FLOWERS: I think that's right.

22 THE COURT: I didn't miss number one?

23 MR. FLOWERS: No, we had some other exhibits.

24 Unfortunately, we were unable to do a hearing today.

25 THE COURT: I appreciate the argument from both sides,

1 and we're adjourned until our next proceeding. And,
2 Mr. Bendann, you'll be back Monday morning.

3 **THE DEFENDANT:** Thank you.

4 **THE CLERK:** All rise. This Honorable Court now stands
5 in recess.

6 (Hearing adjourned.)

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I, Ronda J. Thomas, certify that the foregoing is a true, correct, and complete transcript of the audio-recorded proceedings in the above-entitled matter, audio recorded via FTR Gold on August 18, 2023, and transcribed from the audio recording to the best of my ability, and that said transcript has been compared with the audio recording.

Dated this 14th day of September 2023.

Ronda J. Thomas
RONDA J. THOMAS, RMR, CRR

FEDERAL OFFICIAL COURT REPORTER

<p>MR. FLOWERS: [33] MS. MCGUINN: [13] 2/4 8/24 9/3 9/11 9/14 9/17 11/23 14/24 20/24 21/2 21/9 23/20 27/2 THE CLERK: [2] 21/8 28/4 THE COURT: [57] THE DEFENDANT: [12] 3/10 3/13 3/16 3/20 3/23 4/2 4/5 6/16 7/2 7/11 8/12 28/3</p> <p>1</p> <p>10 [2] 6/1 15/13 100-dollar [1] 6/4 101 [1] 1/24 10:00 a.m. [8] 21/8 24/15 24/20 25/20 25/21 26/5 26/9 26/15 1141 [2] 12/18 21/24 1144 [1] 13/3 1146 [1] 21/24 11:10 [2] 1/8 2/1 14th [3] 23/24 24/1 29/12 15 [1] 4/25 16th [1] 4/10 18 [4] 1/8 4/22 9/23 29/8 18 United [1] 9/6 1984 [1] 3/13 1985 [2] 12/19 14/15 1st [3] 5/11 13/23 18/15</p> <p>2</p> <p>200 [1] 6/2 2017 [3] 4/10 5/11 13/10 2018 [2] 4/10 4/10 2019 [2] 4/11 4/11 2023 [7] 1/8 5/12 13/13 13/20 13/23 29/8 29/12 21201 [1] 1/25 21st [1] 4/10 2251 [2] 4/22 9/6 23-cr-0278-JKB [1] 1/5 23-cr-278-JKB [1] 4/4 23rd [1] 5/12 250,000-dollar [2] 5/10 6/3 26 [1] 4/10 278 [1] 2/7 2nd [1] 4/11</p>	<p>3</p> <p>30 [1] 5/1 3142 [5] 9/5 9/8 9/13 9/24 11/12</p> <p>4</p> <p>4th [1] 1/24</p> <p>5</p> <p>5:00 a.m. [2] 7/14 18/13 5:00 in [1] 17/20</p> <p>6</p> <p>6th [1] 24/1</p> <p>7</p> <p>768 [2] 12/17 21/23</p> <p>9</p> <p>9th [2] 4/11 13/25</p> <p>A</p> <p>a.m. [12] 1/8 2/1 7/14 18/13 21/8 24/15 24/20 25/20 25/21 26/5 26/9 26/15 ability [2] 3/19 29/9 able [3] 3/14 13/11 15/1 abnormal [1] 19/13 about [23] 3/2 3/2 6/18 6/21 7/14 7/17 7/22 13/5 14/4 14/10 15/1 15/12 16/4 16/5 17/2 17/4 17/6 19/13 20/23 22/20 25/11 26/4 26/16 above [2] 1/10 29/7 above-entitled [2] 1/10 29/7 ABRAMS [2] 1/17 2/12 absolutely [1] 21/16 abuse [2] 18/16 19/4 access [2] 14/25 15/11 according [1] 16/19 account [1] 18/14 accurate [1] 22/24 accused [1] 13/8 act [13] 9/19 11/12 12/5 12/21 16/5 17/25 19/11 19/19 20/14 23/10 25/9 25/22 26/15 action [1] 8/20 actually [2] 4/20 21/11 Adam [1] 23/10 add [1] 23/5 additional [4] 8/8 11/22 11/25 19/24 additions [1] 23/5 address [1] 3/5</p>	<p>adjective [1] 14/19 adjourned [2] 28/1 28/6 adverse [1] 8/18 affecting [3] 4/21 5/16 5/19 afford [1] 7/6 after [2] 13/1 13/8 again [13] 6/13 10/19 11/2 11/6 12/18 13/14 14/9 16/19 17/12 17/16 22/15 24/11 26/15 against [4] 2/17 6/24 8/20 14/10 agents [1] 6/21 ago [1] 18/15 agree [2] 16/21 17/1 ahead [3] 17/10 22/13 24/4 Aided [1] 1/22 air [1] 17/24 albeit [1] 18/14 Alexander [2] 22/11 22/12 all [19] 2/13 2/15 3/14 3/24 4/6 4/22 7/3 7/4 8/13 8/16 9/18 13/10 16/21 18/5 18/10 21/16 26/6 27/4 28/4 allegation [1] 4/8 allegations [1] 2/18 allege [2] 4/7 4/9 alleged [3] 3/25 13/15 22/21 allegedly [1] 9/24 alleges [2] 4/6 5/11 allow [4] 9/9 10/3 17/19 17/19 allowed [2] 9/21 17/14 alone [1] 18/9 along [3] 5/21 20/15 22/12 already [5] 8/1 10/8 10/13 10/18 15/6 also [11] 5/9 6/6 7/15 10/10 13/5 15/25 16/17 18/8 22/4 24/3 27/9 always [1] 27/5 am [7] 2/20 3/16 11/23 16/24 19/23 21/3 21/3 amendment [4] 6/19 6/25 7/3 8/10 AMERICA [2] 1/3 2/6 amplify [1] 18/4 another [1] 24/11 answer [3] 6/21 6/23 23/18 answered [1] 19/11 anticipated [1] 12/15 any [22] 3/17 3/18</p> <p>4/20 5/3 5/6 5/15 5/17 5/20 6/4 6/20 6/21 6/23 11/25 12/6 12/12 23/5 23/5 23/9 25/5 25/6 25/10 27/16 anything [4] 3/1 6/23 27/1 27/15 appear [1] 12/5 appearance [6] 1/10 7/20 8/2 8/7 11/14 19/16 appearances [1] 16/18 appears [1] 16/16 apply [1] 14/16 appointed [2] 7/7 8/6 appointment [1] 8/6 appreciate [4] 11/8 15/21 19/6 27/25 approach [1] 22/9 appropriate [2] 8/5 11/11 approximately [1] 15/13 April [1] 24/10 are [31] area [1] 16/18 aren't [1] 17/23 argument [6] 10/22 12/3 16/22 19/6 20/2 27/25 arguments [6] 11/9 11/10 20/19 21/6 26/6 27/4 around [1] 23/3 arrest [5] 13/24 14/8 17/21 18/13 19/21 arrested [4] 13/1 13/8 13/16 13/19 arrests [1] 19/19 as [30] ask [8] 7/6 8/6 10/10 11/19 14/21 24/6 25/10 27/19 asking [2] 10/23 11/21 assessment [1] 6/5 assets [1] 6/9 Assistant [1] 2/4 assume [2] 26/12 26/13 assure [1] 26/25 attached [1] 6/6 attack [1] 24/9 attempted [1] 4/12 attorney [6] 2/5 7/4 7/6 7/7 11/15 18/7 attorney's [2] 15/3 19/12 audio [5] 1/21 29/6 29/7 29/8 29/10</p> <p>audio-recorded [1] 29/6 August [3] 1/8 4/10 29/8 August 26 [1] 4/10 authority [3] 12/12 12/16 16/24 authorization [1] 16/18 available [6] 21/3 21/3 21/10 21/11 24/24 25/3 aware [4] 2/20 13/11 25/17 25/17 awareness [2] 20/5 20/6</p> <p>B</p> <p>back [7] 11/21 13/10 13/20 21/23 24/6 24/10 28/2 Bail [10] 9/19 11/12 12/5 12/21 16/5 17/24 19/11 19/19 20/14 25/22 Baltimore [2] 1/7 1/25 based [3] 9/4 17/22 22/13 basis [2] 9/1 21/15 be [65] bearing [1] 19/9 beat [1] 13/4 because [15] 2/16 9/5 10/11 10/18 11/9 12/2 13/11 13/16 16/6 16/14 16/25 17/2 17/18 18/17 24/10 becomes [1] 19/24 been [23] 2/20 5/15 5/18 7/15 10/8 10/8 10/13 10/18 12/8 15/1 15/4 15/16 15/17 16/7 16/15 18/6 18/17 21/6 23/3 23/19 24/14 26/10 29/10 before [4] 1/11 11/14 20/9 27/12 behalf [4] 1/14 1/16 2/5 2/10 being [2] 14/3 15/3 believe [3] 6/1 23/10 26/2 BENDANN [22] 1/6 2/7 2/10 2/14 2/15 7/15 8/9 9/18 10/7 10/12 10/19 10/20 10/23 11/3 13/20 19/8 22/14 23/13 23/15 24/5 24/18 28/2 Bendann's [2] 13/12 13/24 best [2] 12/17 29/9</p>
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